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U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES SPEARS, JR.,)	Case No. 5:06-cv-124
)	
Petitioner,)	Judge Dan Aaron Polster
)	
vs.)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
JULIUS WILSON, Warden)	
)	
Respondent.)	

Before the Court is the Report and Recommendation of Magistrate Judge David S. Perelman, issued on November 27, 2006 ("R & R"). (ECF. No. 10.) Petitioner James Spears, Jr. has filed a 28 U.S.C. § 2254 petition for writ of habeas corpus challenging the constitutionality of his conviction on one count of rape. The petition alleges due process and ineffective assistance of counsel issues. Respondent moved to dismiss the petition has having been untimely filed. The Magistrate Judge found that Petitioner's petition was untimely filed, and accordingly recommends that the petition be dismissed.

Under the relevant statute:

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1)(C) (1988) (emphasis added). Here, six weeks have elapsed since the

R & R was issued, and Petitioner has filed neither an objection nor a request for an extension to file objections.

The failure to timely file written objections to a Magistrate Judge's report and recommendation constitutes a waiver of a *de novo* determination by the district court of an issue covered in the report. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985); *see United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Moreover, the Court has reviewed the Magistrate Judge's thorough and well-written R & R on the merits, and finds no reason to disagree with the Magistrate Judge's findings and conclusion that Petitioner failed to timely file the instant habeas petition.

Accordingly, the Court hereby **ADOPTS** the Magistrate Judge's Report and Recommendation (**ECF No. 10**), and the underlying petition for writ of habeas corpus is **DENIED**.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Dan Polster', written over a horizontal line.

Dan Aaron Polster
United States District Judge